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RICHARD M. FIRESTONE
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February 15, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEB 15 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Re: Ex Parte Submission
GEN Docket No. 90-314

Dear Mr. Caton:

Today the attached document related to the above-captioned docket was provided to Barbara Esbin, Michele Farquhar and David Nall of the Wireless Telecommunications Bureau and Christopher Wright and Peter Tenhula of the Office of General Counsel on behalf of SBC Communications Inc. This information was provided as further clarification of issues discussed during a meeting on Tuesday, February 13, 1996 with the Wireless Bureau and the General Counsel's Office.

An original and one copy of this Notice are being submitted to the Secretary, with a copy served as well on each of the above-named FCC officials. Please contact me if you have any questions regarding this matter.

Respectfully submitted,



Richard M. Firestone

Enclosure

cc: Barbara Esbin, Esq.
Michele Farquhar, Esq.
David Nall, Esq.
Christopher J. Wright, Esq.
Peter Tenhula, Esq.

Wayne Watts, Esq.
Mr. Michael Bennett

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BY HAND

Barbara Esbin, Esq.,
Special Counsel for Competition
Commercial Wireless Division
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Room 7002
2025 M Street, N.W.
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FEB 15 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Re: Ex Parte Submission in GEN Docket
No. 90-314; Clarification of SBC's
Request for Interim Relief

Dear Ms. Esbin:

This responds to your request for a clarification of the interim relief which our client, SBC Communications Inc. ("SBC"), is seeking from the requirements of Section 22.903 of the Commission's Rules. This matter was addressed in SBC's ex parte submission of February 13, 1996.

SBC believes it would be appropriate and in the public interest for the Commission to grant three forms of interim relief from the requirements of Section 22.903, either immediately or as part of any new notice of proposed rulemaking issued in this Docket. SBC believes that consumers would benefit directly and immediately by the grant of relief at this time, and that relief should not await the completion of any new rulemaking proceeding.

The three forms of interim relief SBC is seeking are:

- ° a waiver applicable to all Bell Operating Companies ("BOCs") of subsections (b)(2), (b)(3) and (b)(4) of Section 22.903;

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- ° an amendment to subsection (d) of Section 22.903, to make clear subsection (d) only applies to transactions between the cellular subsidiary and the in-region incumbent local exchange carrier affiliated with the cellular subsidiary (as was the case under the predecessor rule, Section 22.901(c)(3)); and
- ° an extension to all BOC cellular affiliates of the recent CLLE waiver granted to SBMS.

You asked for clarification of the first two forms of interim relief and we explain each of them below:

1. Waiver of Subsections (b)(2), (b)(3) & (b)(4)

These subsections require that the cellular subsidiaries have separate officers; employ separate operating, marketing, installation and maintenance personnel; and, utilize separate computer and transmission facilities in the provision of cellular service. As such, they stand as obstacles to the kind of integrated offering of services -- on a "one-stop" basis -- which the Commission has found beneficial to consumers in numerous other contexts. A waiver of these subsections would be of immediate benefit to consumers.¹

If these provisions were waived, consumers could promptly obtain from a single point of contact various forms of telecommunications services, as well as ongoing repair and maintenance services, and other features. In addition, a waiver would eliminate the unnecessary costs which the BOCs are forced to bear in order to provide services on a separated basis -- but which their competitors, including large, established competitors such as AT&T and GTE are able to avoid in connection with their integrated service offerings.

¹ In light of Section 601(d) of the new Telecommunications Act of 1996, one aspect of these provisions -- the requirement that the cellular subsidiary maintain separate "marketing" personnel (which SBC interprets to mean actual sales personnel), as set forth in subsection (b)(3) of Section 22.903 -- is of questionable validity at this time.

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On the other hand, even in the unlikely event that -- as a consequence of a new rulemaking proceeding -- the Commission were to decide to impose structural separation requirements on the entire wireless industry, the BOCs could promptly unwind any consolidations undertaken pursuant to an interim waiver of these subsections and return to the status quo ante. Indeed, when SBC reviewed the various requirements of Section 22.903 for purposes of deciding which should be dealt with by interim relief, it intentionally chose only those which could be unwound promptly should the Commission's ultimate decision have the effect of reversing the grant of an interim waiver. SBC believes that each of the items covered by subsections (b)(2), (b)(3) and (b)(4) meet that standard. If SBC (and the other BOCs) were granted an interim waiver of these subsections, and the Commission subsequently decided to reimpose some or all of these structural separation requirements, a reversion to the status quo ante could be accomplished within a reasonably short period of time.

2. Amendment to Subsection (d)

Subsection (d) of Section 22.903 governs transactions between the cellular subsidiary and, as currently written, the "BOC or its affiliates." In the opening sentence of Section 22.903, "BOC" was -- for the first time under this rule -- defined to include each of the Regional Holding Companies (RHCs) as well as their successors in interest and affiliated entities. Thus, as currently written, subsection (d) could be read to affect all transactions between a cellular subsidiary and its ultimate parent RHC, and all transactions between the cellular subsidiary and every single subsidiary and affiliate under the umbrella of the RHC.

This marks a material change from the prior Section 22.901(c)(3), which was the predecessor of Section 22.903(d) before the Part 22 Rewrite. While there was a reference to the RHCs and their affiliates in Section 22.901(b), the RHCs and their affiliates were not defined as "BOCs." Rather, in the subsequent subsections of Section 22.901 -- and in particular, in subsection (c)(3) which was the predecessor of Section 22.903(d) -- the reference was to transactions between the cellular subsidiary and the "carrier." The "carrier" was the in-region, established local exchange

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carrier affiliate of the cellular subsidiary. The rule was not intended to address relations between two subsidiaries of an RHC which were already separate from the local exchange carrier.

In the case of SBC, the "carrier" is Southwestern Bell Telephone Company ("SWBT"). Thus, under the former Section 22.901(c)(3), only transactions between SBC's cellular subsidiary, Southwestern Bell Mobile Systems, ("SBMS") and SWBT were governed by Section 22.901(c)(3), consistent with the intent of the affiliate transaction rule. However, as rewritten, Section 22.903(d) now could be read to govern not only transactions between SBMS and SWBT, but also, all transactions between SBMS and SBC and all transactions between SBMS and all subsidiaries and affiliates of SBC (not limited to SWBT).²

Inasmuch as this aspect of the rewrite of Part 22 of the Rules was not intended to effect a substantive change, subsection (d) of Section 22.903 should be amended to restore it to the same meaning which that provision had under Section 22.901(c)(3). SBC has suggested, in the draft notice of proposed rulemaking which appears at Exhibit 2 to the ex parte submission of February 13, 1996, that this can be accomplished simply by deleting "the BOC or its affiliates" and substituting "its affiliated incumbent local exchange carrier(s)" at the beginning of subsection (d). SBC has suggested the use of the term "incumbent local exchange carrier" in order to correspond to the new definition adopted by the Telecommunications Act of 1996 (see new Section 251(h) of the Communications Act).

* * *

As noted above, SBC believes that the foregoing interim relief is both appropriate and in the public interest. SBC also believes it is plainly consistent with actions the Commission has taken in other contexts in order to foster competition and to promote immediate

² This same issue was addressed in the Comments of SBC Communications Inc., In the Matter of Petition of Ameritech Communications for Partial Waiver of Section 22.903 of the Commission's Rules, at page 4 (filed Nov. 6, 1995).

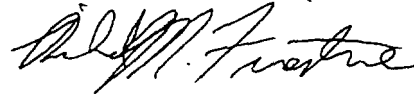
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benefits for consumers. Finally, SBC believes that the Commission should not delay granting this relief until it has concluded, or even until after it has commenced, a new rulemaking in this Docket. Rather, SBC believes that the relief should be granted immediately, or in no event later than the outset of -- and as a part of -- any new notice of proposed rulemaking.

We hope that the foregoing clarification addresses your questions and would be happy to provide any additional information at your convenience. Thank you again for your consideration.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard M. Firestone", written in a cursive style.

Richard M. Firestone

cc: Michele Farquhar, Esq.
David Nall, Esq.
Christopher J. Wright, Esq.
Peter Tenhula, Esq.
Wayne Watts, Esq.
Mr. Michael W. Bennett